THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

WRIT PETITION No.13401 of 2006

Dated: 10.07.2006

Between

Balki Surya Prakash Rao, S/o.late B. Satyanarayana,
Himayat Nagar, Hyderabad and another.

…Petitioners

And

The Commissioner,
Municipal Corporation of Hyderabad,
Tank Bund Road, Hyderabad and two others.

…Respondents

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND

THE HONOURABLE SRI JUSTICE D. APPA RAO

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WRIT PETITION No.13401 of 2006

ORDER: ***(Per the Hon'ble Sri Justice J.Chelameswar)***

The writ petition is filed with the prayer as follows:

> "to issue a writ of Mandamus against the Respondents 1 and 2 to perform their statutory duties to recover the property tax by invoking the provisions under Section 276, 277, and 278 of the HMC Act against M/s.Remedy Hospitals i.e., Respondent No.3 in premises bearing M.No.3-6-2/1/1, 3-6-2/1/2, Himayatnagar, Hyderabad by affecting recoveries of property tax to a tune of Rs.44,03,077/- and also suitable direction be issued so that the Corporation collects tax for every financial year and direct the Corporation to dispose of the representation dated 8th June, 2005."

The petitioners claimed to be the co-owners of a part of the property described as follows:

> "The petitioners are the co-owners of the Grandpas Royal Mansion Complex consisting of Cellar, Mezzanine Floor, rear portion of ground, first, second, third and fourth floor bearing M.No.3-6-2/1, situated at Liberty Road, Himayatnagar."

The petitioners assert that they leased out a part of the abovementioned property. The details of which are described in the affidavit filed in support of the writ petition at paragraph 3, which reads as follows:

> "The Respondent No.3 has approached the petitioners with an intention to start Super Specialty Cardiac Center and requested the petitioners to lease out the rear cellar portion admeasuring 3833 sq ft (rear cellar area) for parking and mezzanine floor (over the rear cellar portion) admeasuring 1845 sq ft including common areas; and ground floor rear portion

admeasuring 3048 sq ft including common areas; first floor admeasuring 6652 sq ft (including common areas); second floor admeasuring 6652 sq ft including common areas; third and fourth floor areas admeasuring 6652 sq ft each (including common areas) forming part of premises bearing M.No.3-6-2/1, known as Grandpas Royal Mansion, situated at Liberty Road, Himayatnagar, Hyderabad."

The said properties were admittedly leased out to the third respondent. The details of which may not be necessary for the present purpose.

It is further asserted in the affidavit filed in support of the writ petition that among the other conditions of lease one of the conditions agreed between the parties is that the lessee is liable to pay the property tax and assessment etc.

According to the petitioners, the abovementioned property is liable for assessment under the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') under the head "**Taxes on properties".**

It is not the case of the petitioners that the Corporation represented by respondents 1 and 2 herein issued any demand notice to the petitioners to pay any tax. The petitioners asserts that a huge tax liability of Rs.44,03,077/- has accrued on the abovementioned property over a period of time, the details of which may not be necessary. The petitioners grieve that respondents 1 and 2 have not exercised the power under
Section 276 of the Act and collected the tax from the third respondent. Hence, the present writ petition.

Sri Achuthanand, learned counsel for the petitioners, contends that in view of the definition of the expression "**occupier**" under sub-section (36) of Section 2 of the Act, the third respondent becomes

liable for the payment of the abovementioned tax.

The expression "**occupier**" under sub-section (36) of Section 2 of the Act reads as follows:

> "(a) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable.
> (b) a rent-free tenant,
> (c) licensee in occupation of land or building, and
> (d) any person who is liable to pay to the owner damages for the use and occupation of any land or building."

He further contends that Section 276 of the Act obligates the respondents 1 and 2 to compulsorily collect the tax from the third respondent, who is a lessee, and by virtue of default in performing the obligation as understood by the petitioner, the respondents 1 and 2 are, as required under law, to be compelled to collect the abovementioned amount of tax from the third respondent.

Section 197 of the Act authorizes the Municipal Corporation to levy various taxes indicated therein, and one of them being "**Taxes on lands and building"**.

Under Section 199 of the Act, various categories of taxes that could be levied on building and lands in the city governed by the Act are indicated.

Under Section 204 of the Act, it is stipulated that property taxes are to be collected form the actual occupier of the premises upon which the said taxes are assessed, if the premises is held by the occupier immediately from the Government or from the Corporation.

The expression "**Corporation**" defined under sub-section (9) of Section 2 of the Act reads as follows:

"the Corporation – means the Municipal Corporation of the city."

However, under sub-section (2) of Section 204 of the Act it is stipulated that if the premises is leased out, the taxes shall be primarily leviable on the lessor.

Sub-section (2) of Section 204 of the Act reads as follows:

"(2) Otherwise the said taxes shall be primarily leviable as follows, namely:-

(a) if the premises are let, from the lessor;

(b) if the premises are sub-let, from the superior lessor; and

(c) if the premises are unlet, from the person in whom the right to let the same, vests."

Section 276 of the Act reads as follows:

"(1) If the sum due on account of any property tax remains unpaid after a bill for the same has been duly served on the person primarily liable for the payment thereof and the said person be not the occupier for the time being of the premises in respect of which the tax is due, the Commissioner may serve a bill for the amount on the occupier of the said premises, or if there are two or more occupiers thereof, may serve a bill on each of them for such portion of the sum due as bears to the whole amount due the same ratio which the rent paid by such occupier bears to the aggregate amount of rent paid by them both or all in respect of the said premises.

(2) If the occupier or any of the occupiers fails within thirty days form the service of any such bill to pay the amount therein claimed, the said amount may be recovered from him in accordance with the foregoing provisions.

(3) No arrears of a property-tax shall be recovered from any occupier under this section, which had remained due for more than one year, or which is due on account of any period for which the occupier was not in occupation of the premises on which the tax is

assessed.
(4) If any sum is paid by, or recovered from an occupier under this section, he shall be entitled to credit therefor in account with the person primarily liable for the payment of the same."

In our view, the language of Section 276 of the Act only enables the Corporation to proceed against the actual occupier, the lessee (third respondent in the present writ petition), and it does not create any obligation on the part of the Municipal Corporation to proceed with only against the lessee.

The expression "**Commissioner may serve a bill for the amount on the occupier**" occurring under sub-section (1) of Section 276 of the Act, in our view, makes it clear that it is only enabling section allowing the Municipal Corporation to proceed against the occupier and that does not necessarily mean the owner or the lessor is necessarily relieved of the obligation to pay the tax.

The definition of the expression '**Occupier**' in our view, does not make the occupiers primarily liable for the payment of tax. It is already discussed earlier that the primary liability is with the lessor in case of a land held on lease. Section 276 of the Act only enables the Corporation to recover the tax due from the actual occupier, the option is with the Corporation either to proceed against the lessor or the lessee for recovery of the amount of tax due on the property.

In the present writ petition, the petitioner purports to remind the respondents 1 and 2 of their "obligation" to recover the tax due from the third respondent. Respondents 1 and 2 do have an obligation to recover the tax, no doubt, but as to from whom such tax should be recovered is a matter of option with the respondents 1 and 2. As the option is between the petitioners and the third respondent, the petitioners do not, in our view, have any legal right to seek a writ of mandamus, nor there is corresponding legal obligation on the

respondents 1 and 2 to initiate proceedings for recovery of tax exclusively against the third respondent.

During the course of the arguments, we are given to understand that the petitioners have already initiated proceedings for eviction of the third respondent and obviously, the present writ petition is one more attempt to get rid off the third respondent, all in the name of a public duty and loss to the Municipal Corporation. If the petitioners were to be such law abiding citizens and realize their obligation in law, the legal position is clear that they must pay the tax as and when it is demanded and recover the tax from the third respondent, if it is really the agreement between the petitioners and the third respondent. We make it clear that we are not making any pronouncement as to the rights and obligations of the petitioners and the third respondent arising out of the lease agreement, but we are proceeding on the hypothesis for the sake of argument that the third respondent is under such an obligation. In fact, such a situation is contemplated by the Legislature and a provision is made under Section 276 (4) of the Act, which reads as follows:

> " 276. (4) If any sum is paid by, or recovered from an occupier under this section, he shall been titled to credit therefore in account with the person primarily liable for the payment of the same."

Whatever may be the rights and obligations created under the lease deed between the petitioners and the third respondent, the State/Municipal Corporation is not bound by such obligations, as it was not a party to the lease transaction. Apart from that, the authority, either of the State or its instrumentalities, in levying and collecting tax, can never be the subject matter of an alteration by an agreement between the subjects. Tax is a compulsory extortion by the State for a public purpose and subject only to the well-known limitations of the Constitution and the language of the law under which the tax is levied and collected.

The writ petition, in our view, is mischievous and without merits,

and is liable to be dismissed at the stage of admission.

For the reasons mentioned above, we deem it appropriate to impose costs on the petitioners at Rs.5,000/- to be paid to the Legal Services Authority, within a period of two weeks from today.

Copy of this order is directed to be communicated to the Secretary, Legal Services Authority, for receiving the same.

J.Chelameswar, J

D.Appa Rao, J

10th July 2006
va/mrk